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HOUSE BILL 10

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Antonio Lujan and Mary Jane M. Garcia

AN ACT

RELATING TO TRANSPORTATION; PROHIBITING THE USE OF A MOBILE
COMMUNICATION DEVICE WHILE OPERATING A PUBLICLY OWNED OR
OPERATED TRAIN; PROHIBITING THE USE OF A MOBILE COMMUNICATION
DEVICE WHILE OPERATING A MOTOR VEHICLE; PROHIBITING THE USE OF
A MOBILE COMMUNICATION DEVICE WHILE OPERATING A MOTOR VEHICLE
ENGAGED IN PUBLIC TRANSPORTATION OR SCHOOL TRANSPORTATION;
PROVIDING EXCEPTIONS; PREEMPTING LOCAL AUTHORITY REGULATION;
IMPOSING PENALTIES; DIRECTING THE DISPOSITION OF CERTAIN
PENALTY ASSESSMENT MISDEMEANOR RECEIPTS; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 63, Article 3 NMSA
1978 is enacted to read:

"[NEW MATERIAL] USE OF MOBILE COMMUNICATION DEVICE BY

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1 TRAIN OPERATOR PROHIBITED--EXCEPTIONS--PENALTY.--

2 A. A person while in actual physical control of an
3 operating train belonging to a railroad owned or operated by
4 the state or one of its subdivisions shall not use a mobile
5 communication device except:

6 (1) if there is no other person on the train
7 capable of doing so:

8 (a) to report illegal activity;

9 (b) to summon medical or emergency help;

10 or

11 (c) to prevent injury to a person or to
12 property;

13 (2) while the train is stopped; or

14 (3) in the ordinary course of business as
15 required by the railroad.

16 B. As used in this section, "mobile communication
17 device" means a wireless, two-way communications device that is
18 designed to receive and transmit voice, text or image
19 communication.

20 C. A violation of the provisions of this section is
21 a petty misdemeanor, and upon conviction, a judge shall
22 sentence the violator to the payment of a fine of two hundred
23 dollars (\$200)."

24 Section 2. A new section of the Motor Vehicle Code is
25 enacted to read:

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1 "[NEW MATERIAL] USE OF MOBILE COMMUNICATION DEVICE

2 PROHIBITED--EXCEPTIONS--PENALTY.--

3 A. A driver shall not use a mobile communication
4 device except:

5 (1) if there is no other person in the motor
6 vehicle capable of doing so:

7 (a) to report illegal activity;

8 (b) to summon medical or other emergency
9 help; or

10 (c) to prevent injury to a person or to
11 property;

12 (2) in an authorized emergency or law
13 enforcement motor vehicle;

14 (3) while the motor vehicle is lawfully
15 parked;

16 (4) when using hands-free equipment; provided
17 that the exception allowed in this paragraph does not apply to
18 the driver of a motor vehicle used in a public or school
19 transportation system owned or operated by the state or a local
20 authority unless the provisions of Paragraph (5) of this
21 subsection apply to the driver; or

22 (5) in addition to the applicable exceptions
23 in the provisions of this subsection, the driver of a motor
24 vehicle used in a public or school transportation system owned
25 or operated by the state or a local authority may use a mobile

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1 communication device in the ordinary course of business as
2 required by the public or school transportation system.

3 B. As used in this section:

4 (1) "hands-free equipment" means a built-in
5 feature of, or a piece of equipment used in addition to, a
6 mobile communication device that allows a person using the
7 mobile communication device to keep both of the person's hands
8 on the steering wheel and the person's eyes on the highway; and

9 (2) "mobile communication device" means a
10 wireless, two-way communications device that is designed to
11 receive and transmit voice, text or image communication.

12 C. This section preempts the power of local
13 authorities, including a home rule municipality that has
14 adopted a charter pursuant to Article 10, Section 6 of the
15 constitution of New Mexico, to regulate the use of mobile
16 communication devices in motor vehicles and supersedes any law,
17 ordinance, order or rule enacted by a local authority,
18 including a home rule municipality that has adopted a charter
19 pursuant to Article 10, Section 6 of the constitution of New
20 Mexico, to regulate the use of mobile communication devices in
21 motor vehicles.

22 D. A violation of the provisions of this section is
23 a penalty assessment misdemeanor, the penalty for which is
24 prescribed in Section 66-8-116 NMSA 1978."

25 Section 3. Section 66-8-116 NMSA 1978 (being Laws 1978,

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1 Chapter 35, Section 524, as amended) is amended to read:

2 "66-8-116. PENALTY ASSESSMENT MISDEMEANORS--

3 DEFINITION--SCHEDULE OF ASSESSMENTS.--

4 A. As used in the Motor Vehicle Code, "penalty
5 assessment misdemeanor" means violation of any of the following
6 listed sections of the NMSA 1978 for which, except as provided
7 in Subsections D and E of this section, the listed penalty
8 assessment is established:

9	COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY
10			ASSESSMENT
11	Permitting unlicensed		
12	minor to drive	66-5-40	\$ 10.00
13	Failure to obey sign	66-7-104	10.00
14	Failure to obey signal	66-7-105	10.00
15	Speeding	66-7-301	
16	(1) up to and including		
17	ten miles an hour		
18	over the speed limit		15.00
19	(2) from eleven up to		
20	and including fifteen		
21	miles an hour		
22	over the speed limit		30.00
23	(3) from sixteen up to		
24	and including twenty		
25	miles an hour over the		

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1	speed limit		65.00
2	(4) from twenty-one up to		
3	and including twenty-five		
4	miles an hour		
5	over the speed limit		100.00
6	(5) from twenty-six up to		
7	and including thirty		
8	miles an hour over the		
9	speed limit		125.00
10	(6) from thirty-one up to		
11	and including thirty-five		
12	miles an hour over the		
13	speed limit		150.00
14	(7) more than thirty-five		
15	miles an hour over the		
16	speed limit		200.00
17	Unfastened safety belt	66-7-372	25.00
18	Child not in restraint device		
19	or seat belt	66-7-369	25.00
20	Minimum speed	66-7-305	10.00
21	Speeding	66-7-306	15.00
22	Improper starting	66-7-324	10.00
23	Improper backing	66-7-354	10.00
24	Improper lane	66-7-308	10.00
25	Improper lane	66-7-313	10.00

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1	Improper lane	66-7-316	10.00
2	Improper lane	66-7-317	10.00
3	Improper lane	66-7-319	10.00
4	Improper passing	66-7-309 through 66-7-312	10.00
5	Improper passing	66-7-315	10.00
6	Controlled access		
7	violation	66-7-320	10.00
8	Controlled access		
9	violation	66-7-321	10.00
10	Improper turning	66-7-322	10.00
11	Improper turning	66-7-323	10.00
12	Improper turning	66-7-325	10.00
13	Following too closely	66-7-318	10.00
14	Failure to yield	66-7-328 through 66-7-331	10.00
15	Failure to yield	66-7-332	50.00
16	Failure to yield	66-7-332.1	25.00
17	Pedestrian violation	66-7-333	10.00
18	Pedestrian violation	66-7-340	10.00
19	Failure to stop	66-7-342 and 66-7-344	
20		through 66-7-346	10.00
21	Railroad-highway grade		
22	crossing violation	66-7-341 and 66-7-343	150.00
23	Passing school bus	66-7-347	100.00
24	Failure to signal	66-7-325 through 66-7-327	10.00
25	Failure to secure load	66-7-407	100.00

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1	Operation without oversize-		
2	overweight permit	66-7-413	50.00
3	Improper equipment	66-3-801	10.00
4	Improper equipment	66-3-901	20.00
5	Improper emergency		
6	signal	66-3-853 through 66-3-857	10.00
7	Operation interference	66-7-357	5.00
8	Littering	66-7-364	300.00
9	Improper parking	66-7-349 through 66-7-352	
10		and 66-7-353	5.00
11	Improper parking	66-3-852	5.00
12	Failure to dim lights	66-3-831	10.00
13	Riding in or towing		
14	occupied house trailer	66-7-366	5.00
15	Improper opening of doors	66-7-367	5.00
16	No slow-moving vehicle		
17	emblem or flashing		
18	amber light	66-3-887	5.00
19	Open container - first		
20	violation	66-8-138	25.00
21	<u>Prohibited mobile</u>		
22	<u>communication device</u>	<u>Section 2 of</u>	
23	<u>use</u>	<u>this 2010 act</u>	<u>200.00.</u>

24 B. The term "penalty assessment misdemeanor" does
25 not include a violation that has caused or contributed to the
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1 cause of an accident resulting in injury or death to a person.

2 C. When an alleged violator of a penalty assessment
3 misdemeanor elects to accept a notice to appear in lieu of a
4 notice of penalty assessment, a fine imposed upon later
5 conviction shall not exceed the penalty assessment established
6 for the particular penalty assessment misdemeanor and probation
7 imposed upon a suspended or deferred sentence shall not exceed
8 ninety days.

9 D. The penalty assessment for speeding in violation
10 of Paragraph (4) of Subsection A of Section 66-7-301 NMSA 1978
11 is twice the penalty assessment established in Subsection A of
12 this section for the equivalent miles per hour over the speed
13 limit.

14 E. Upon a second conviction for operation without a
15 permit for excessive size or weight pursuant to Section
16 66-7-413 NMSA 1978, the penalty assessment shall be two hundred
17 fifty dollars (\$250). Upon a third or subsequent conviction,
18 the penalty assessment shall be five hundred dollars (\$500)."

19 Section 4. Section 66-8-119 NMSA 1978 (being Laws 1968,
20 Chapter 62, Section 159, as amended) is amended to read:

21 "66-8-119. PENALTY ASSESSMENT REVENUE--DISPOSITION.--

22 A. The division shall remit all penalty assessment
23 receipts, except receipts collected pursuant to Section 2 of
24 this 2010 act and to Subsections A through G of Section
25 66-8-116.3 NMSA 1978, to the state treasurer for credit to the

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1 general fund.

2 B. The division shall remit all penalty assessment
3 receipts collected pursuant to Section 2 of this 2010 act to
4 the interlock device fund.

5 [~~B-~~] C. The division shall remit all penalty
6 assessment fee receipts collected pursuant to:

7 (1) Subsection A of Section 66-8-116.3 NMSA
8 1978 to the state treasurer for credit to the local government
9 corrections fund;

10 (2) Subsection B of Section 66-8-116.3 NMSA
11 1978 to the state treasurer for credit to the court automation
12 fund;

13 (3) Subsection C of Section 66-8-116.3 NMSA
14 1978 to the state treasurer for credit to the traffic safety
15 education and enforcement fund;

16 (4) Subsection D of Section 66-8-116.3 NMSA
17 1978 to the state treasurer for credit to the judicial
18 education fund;

19 (5) Subsection E of Section 66-8-116.3 NMSA
20 1978 to the state treasurer for credit to the jury and witness
21 fee fund;

22 (6) Subsection F of Section 66-8-116.3 NMSA
23 1978 to the state treasurer for credit to the brain injury
24 services fund; and

25 (7) Subsection G of Section 66-8-116.3 NMSA

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1 1978 to the state treasurer for credit to the court facilities
2 fund."

3 Section 5. EMERGENCY.--It is necessary for the public
4 peace, health and safety that this act take effect immediately.

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